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Six years after Carnation killings, legal costs near \$7M

Attorneys for two people accused of killing six members of the same family on Christmas Eve 2007 are pursuing another legal argument that could further delay the death-penalty case.

By [Sara Jean Green](#)

Seattle Times staff reporter



Greg Gilbert / The Seattle Times

Defendant Joseph McEnroe quietly listens to arguments for and against the possibility of receiving a death sentence.

Court costs are now nearing the \$7 million mark in the prosecution of Joseph McEnroe and Michele Anderson, who are accused of killing six members of Anderson's family on Christmas Eve 2007 in Carnation.

While one criminal-law scholar following the case sees the growing expense and repeated delays as part of a larger defense strategy to try to force King County Prosecutor Dan Satterberg to back down from pursuing the death penalty, a member of McEnroe's defense team said she is

professionally obligated to investigate and pursue any argument that could spare her client from landing on death row.

Though frustrated with the delays, one family member said she backs the state's efforts to put the question to a jury as to whether McEnroe and Anderson deserve the death penalty — no matter the cost or how long it takes to get to trial or resolve the inevitable appeals should they be found guilty and sentenced to death.

"I guess I'm here for the long haul," said Pam Mantle, whose daughter, son-in-law and grandchildren were among those fatally shot. "It's never going to be over for me."

As of the end of December, defense costs for representing McEnroe and Anderson have totaled \$6.18 million, a figure that includes attorneys' salaries and payments for rent, support staff, investigators, social workers and experts.

The state, meanwhile, has spent \$810,427 — the majority of it on staff salaries — between the time McEnroe and Anderson were charged and the end of last year.

The combined cost to the defense and state increased by about \$1 million in 2013 alone.

It's been just over six years since six members of Anderson's family — her parents, brother, sister-in-law and the younger couple's two children — were gunned down in the parents' Carnation home. McEnroe and Anderson have each been charged with six counts of aggravated first-degree murder, punishable by either death or life in prison without the possibility of parole.

Last month, defense attorneys for McEnroe filed a motion seeking to have the court preclude the possibility of the death penalty based on a U.S. Supreme Court ruling in [Alleyne v. United States](#). Anderson's defense team joined in the motion.

The main thrust of the Alleyne decision has to do with mandatory minimum sentences, and the high court determined that any fact that can increase the mandatory minimum is an "element" of the crime and must be alleged in charging documents.

The state argued Alleyne doesn't apply to the case, while the defense contended that the "absence of sufficient mitigating circumstances to warrant leniency" is an "element" of the crime because it potentially increases punishment from life in prison without the possibility of parole to death.

Though Judge Jeffrey Ramsdell agreed with the defense that the absence of sufficient mitigating circumstances to warrant leniency is an "element," he ruled it was premature to preclude the death penalty while acknowledging he wasn't sure how the parties should proceed.

On Wednesday, Ramsdell heard oral arguments after the state asked him to reconsider his earlier ruling on the "element" question.

Ramsdell previously tossed out the death penalty over a different legal question, but that ruling was later overturned by the state Supreme Court.

On the latest question, Ramsdell said in court this week that he planned to have a ruling by Friday, but later clarified that he meant by next Friday.

In their response to the state's motion, McEnroe's defense team argued that allowing their client to plead guilty — so long as he doesn't face the death penalty — would save taxpayers hundreds of thousands of dollars and years of appeals. They also argued that since Washington reinstated the death penalty in 1981, 20 of 35 men sentenced to death have successfully appealed, with only five executions carried out.

Depending on how Ramsdell rules, either side could potentially seek discretionary review by the state Supreme Court to determine if state case law or *Alleyne* takes precedence.

Mary Fan, a University of Washington law professor, said state law prescribes “a choice of penalties” — life in prison without the possibility of release, or the death penalty — “as opposed to a mandatory minimum” for the crime of aggravated first-degree murder.

“It's why their argument is quite creative,” she said.

“Often in these death-penalty cases, what you're seeing is this battle using procedural hooks to delay imposition of death and to make the imposition of death very costly,” she said.

“You're making it very expensive for the state and taxpayers. It's a strategic attempt to get the state to give up,” a legal maneuver that's seen some success in Maryland and New Jersey, Fan said.

Through his spokesman, Satterberg declined to be interviewed because the case is pending.

Katie Ross, one of McEnroe's defense attorneys, said “it's completely bogus” to think she and her colleagues are involved in some larger movement.

She said McEnroe's defense team is focused on providing him with the best possible defense and doing “everything we can legitimately and legally do to avoid the death penalty.

“Of course that's what we want to do. We have no interest to run up the cost,” she said, adding that allowing her client to plead guilty without facing the death penalty would provide justice to the victims' surviving family members, without them facing the possibility that a conviction or death sentence could be overturned on appeal.

But family member Mantle doesn't see it that way.

“Just because they're facing the death penalty doesn't mean they'll get it, and I understand that. But I think they need to face what they've done” and have a jury decide, she said. “We'll see justice at work — hopefully one of these days before we're all ready to retire.”

Seattle Times staff reporter Jennifer Sullivan contributed to this report, which contains information from *Times* archives.

Sara Jean Green: 206-515-5654 or sgreen@seattletimes.com